

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA**

<b>IN THE MATTER OF THE APPLICATION OF</b>	)	<b>ORDER FINDING PIPELINE</b>
<b>NORTHWESTERN PUBLIC SERVICE FOR</b>	)	<b>IS NOT AN INTRASTATE</b>
<b>AUTHORITY TO INCREASE RATES FOR</b>	)	<b>NATURAL GAS PIPELINE</b>
<b>NATURAL GAS SERVICE</b>	)	<b>AS DEFINED BY SDCL 49-</b>
	)	<b>34A-1(9A)</b>
	)	<b>NG99-002</b>

On June 1, 1999, NorthWestern Public Service, a division of NorthWestern Corporation (NWPS), filed with the Public Utilities Commission (Commission) an application to increase natural gas rates in South Dakota. The application sought an overall increase in rates in the amount of \$2,108,112 or approximately 6%. The Company requested a change in rates to become effective for billings after July 1, 1999.

At its regularly scheduled meeting of June 22, 1999, the Commission found that pursuant to SDCL 49-1A-8, NWPS shall be assessed a filing fee as requested by the executive director up to the statutory limit of \$100,000. The Commission further established an intervention deadline of July 22, 1999. Pursuant to SDCL 49-34A-14, the Commission suspended the operation of the schedule of rates proposed by NWPS for 90 days beyond July 1, 1999. By Order dated September 14, 1999, the Commission further extended the suspension through December 1, 1999.

The Commission scheduled the matter for hearing on October 20-21, 1999, starting at 9:00 A.M. CDT, on October 20, 1999, in Room 413, State Capitol, Pierre, South Dakota. On October 18, 1999, Commission Staff notified the Commission that NWPS and Commission Staff had reached a settlement agreement which increased the rates in the amount of \$1,279,025. Staff requested that the Commission consider the settlement agreement on October 20, 1999. An issue related to NWPS' purchased gas adjustment (PGA) was separated from the rate case issues and was heard at the October 20, 1999, hearing. The issue was whether NWPS was entitled to recover certain costs it had placed in its PGA. On November 1, 1999, at a regularly scheduled meeting, the Commission approved the settlement agreement with an effective date of December 1, 1999. The PGA issue was briefed by NWPS and Commission Staff.

At its April 13, 2000, meeting, the Commission considered the remaining PGA issue. The Commission found that the portion of the \$588,000 for capacity costs from Northern Natural which NWPS has placed in its PGA is not a recoverable cost under the fuel clause and ordered NWPS to remove that amount from its PGA. The Commission further found that the allowed pipeline cost of service shall be the following costs listed on Exhibit 3: the pre-tax return, property taxes, and administrative costs of the Aberdeen pipeline. The Commission further found that Staff's request for an NWPS refund with interest must be denied as not allowed under SDCL 49-34A-25. (Commissioner Schoenfelder dissented.)

On June 8, 2000, Commission Staff filed a Motion to Compel NorthWestern Public Service to Comply with Commission Order. In its motion, Commission Staff stated that NWPS' May 4, 2000 PGA filing included \$42,918.00, representing actual 1999 property taxes for the Aberdeen pipeline. Commission Staff cited to the Commission's findings of fact 14 and 24 which allowed \$23,000.00 for property taxes. See Findings of Fact and Conclusions of Law; Notice of Entry of Order, issued April 27, 2000 (hereafter Commission's Order). Commission Staff also stated that "NWPS used the proportion of actual volumetric capacity released to total physical capacity of the pipeline as

compared to capacity released to capacity utilized by NWPS." Commission Staff stated that this was contrary to the Commission's Order which stated that "if any entity other than NWPS uses capacity on the Aberdeen pipeline, then NWPS' responsibility for the costs of the pipeline shall be reduced in proportionate amount to the capacity used by the other entity." Commission's Order, Finding of Fact 24. Commission Staff requested that the Commission find that NWPS is not complying with the Commission's Order, that such noncompliance is an intentional violation, and order NWPS to comply with the Commission's Order.

On June 26, 2000, the Commission received from NWPS a Response to Motion to Compel and Request for Clarification. In its response to the property tax issue, NWPS stated that it included \$42,918.00 in property taxes in the May PGA because that was the pipeline's actual 1999 property taxes. NWPS stated that after discussing the matter with Staff, NWPS included \$23,000.00, which was the pipeline's actual 1998 property taxes, in its June 2000 PGA filing. NWPS asked that "the Commission clarify whether NPS should include the amount of \$23,000.00 in its future PGA filings or include the actual amount of property taxes assessed as per SDCL 49-34A-25 and consistent with NPS's Natural Gas Adjustment Clause Rates Tariff." On the capacity issue, NWPS stated that since it is the only party with firm entitlement rights on the pipeline, all other shippers have interruptible status. NWPS further stated that the industry standard for calculating interruptible pipeline rates is to base the rates on a 100% load factor derivation of the firm rate.

At its August 22, 2000, meeting, the Commission considered the Motion to Compel. The Commission requested that the parties address the question of whether the pipeline is subject to regulation as an intrastate natural gas pipeline. On December 6, 2000, the Commission received a response to this question from NWPS, entitled Memorandum of NorthWestern Public Service Concerning Status of Nekota Resources, Inc. Pipeline.

At its January 17, 2001, meeting, the Commission considered the Motion to Compel. After listening to comments by NWPS and Commission Staff, the Commission granted the Motion to Compel in part and denied it in part. With respect to Staff's issue concerning the assignment of costs, the Commission denied the Motion to Compel. The Commission defined the word "proportionate" as used in the Commission's Order as "properly related to the characteristics of the service being rendered" or, in other words, a recognition of the fact that a firm capacity right is different than an interruptible right. Thus, NWPS' jurisdictional cost of service for the Aberdeen pipeline should be credited for off-system sales based upon the off-system sales being credited at a 100% load factor rate. With respect to Staff's issue concerning property taxes, the Commission granted the Motion to Compel. The Commission restated that it allowed \$23,000.00 in property taxes, which was the number presented by NWPS to the Commission at the hearing. NWPS was required to comply with the Commission's Order regarding this finding. On the question of whether the pipeline is an intrastate natural gas pipeline as defined by SDCL 49-34A-1(9A), the Commission decided to take that question under advisement.

At its May 8, 2001, meeting, the Commission considered whether the Aberdeen pipeline is an intrastate natural gas pipeline as defined by SDCL 49-34A-1(9A). The Commission has jurisdiction over this matter pursuant to SDCL Chapters 1-26 and 49-34A, specifically 49-34A-1. The Commission voted to find the Aberdeen pipeline is not an intrastate natural gas pipeline as defined by SDCL 49-34A-1(9A). This statute provides as follows:

[A]ny natural gas pipeline located entirely within the state that transports gas from a receipt point to one or more locations for customers other than the pipeline operator. However, the term does not apply if there is only one customer and the

customer is a wholly-owned subsidiary of the pipeline operator, the customer is the parent company of the pipeline operator, or the customer and the pipeline operator are wholly-owned subsidiaries of the same parent company. Further, the term does not apply to natural gas lines and appurtenant facilities used to gather gas from natural gas production facilities or sites and move the gas to an interconnecting transportation pipeline system[.]

The Aberdeen pipeline, owned and operated by Nekota Resources, Inc. (Nekota), transports gas solely for NEC, a subsidiary of NorthWestern Corporation. Nekota is also a subsidiary of NorthWestern Corporation. Thus, the pipeline falls within the exception found in the second sentence of the definition.

At its May 8, 2001, meeting, the Commission also voted to require Nekota to inform the Commission if the way it currently operates the Aberdeen pipeline changes in the future.

It is therefore

ORDERED, that the Aberdeen pipeline is not an intrastate natural gas pipeline as defined by SDCL 49-34A-1(9A); and it is

FURTHER ORDERED, that Nekota shall inform the Commission if the way it currently operates the Aberdeen pipeline changes in the future.

Dated at Pierre, South Dakota, this 11th day of May, 2001.

<p style="text-align: center;"><b>CERTIFICATE OF SERVICE</b></p> <p>The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.</p> <p>By: _____</p> <p>Date: _____</p> <p style="text-align: center;">(OFFICIAL SEAL)</p>
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BY ORDER OF THE COMMISSION:

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JAMES A. BURG, Chairman

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PAM NELSON, Commissioner